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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,815	01/22/2004	Tette van der Lende	2183-6293US	4997
24247 7590 TRASKBRITT, P.C. P.O. BOX 2550 SALT LAKE CITY, UT 84110	06/08/2010		EXAMINER LEVY, NEIL S	
			ART UNIT 1615	PAPER NUMBER
			NOTIFICATION DATE 06/08/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

Office Action Summary**Application No.**

10/763,815

Applicant(s)

VAN DER LENDE, TETTE

Examiner

NEIL LEVY

Art Unit

1615

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-23 is/are pending in the application.
- 4a) Of the above claim(s) 11-19, 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) 1-3 and 5-23 is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's election without traverse of Group II in the reply filed on 7/20/2009 is acknowledged.

Claims 11-19, 22 & 23 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/20/2009.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 5-9 & 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Please insert "weight" after body, to be in accord with (kg/bw). Claim does not indicate what is per cent based. The feed may or may not be the total daily diet.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,6,10 & 20 are rejected under 35 U.S.C. 102(b) as being anticipated by WATANABE et al 473852 with evidence by MORRISON '57.

Watanabe teaches a feedstuff for increasing performance of swine including increasing milk yield, reducing the recurrence days of estrus of dams, and decreasing the number of still births and premature pigs (abstract; col. 2, lines 11-14; col. 4, lines 26-28).

Watanabe particularly teaches an embodiment that contains an assorted feedstuff of corn, soybean meal, bran and vitamin and mineral elements which has the particular amino acid breakdown of 1.07% arginine, 0.66% lysine, 0.50% methionine + cystine, 0.51% threonine, and 0.16% tryptophan (Example 3). Said percentages can be translated into the following ratios relative to lysine: 1.62 arginine, 0.75 methionine + cystine, 0.77 threonine, and 0.24 tryptophan, which read on all of the instant claimed ratios. Watanabe is silent to the particular amount of arginine being at least 200 mg.

Example 3 provides an animal feed for sows, at 4.5 kg/sow/day, based on an average 5v pigs/litter as described in Example 2 and Table 2. The 1.07% arginine is > 1.5 of the 0.66% lysine, and at $1.07\% \times 4.5 \text{ kg/sow/day} = 48\text{g/sow}$. A 100 kg sow then would have 2.40mg/day.

The intended use and benefits of the composition are not of patentable weight.

However, the effects on fertility are enhanced as indicated at column 4, lines 31-33. We would consider the soy bean to constitute the arginine rich protein of the instant Claim 9; see soy versus corn of MORRISON. See here the calcium content of the diet fed by WATANABE; 0.05% calcium, was fed.

The dosage amount fed is not of patentable weight either.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-3, 6-10, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over WATANABE et al 4738852 in view of Laspiur et al 2001

WATANABE (above) teaches the instant swine feeds, with high arginine, but not as high as of the instant claims 3, 5, and 21. LA SPUIR teaches arginine supplementation of swine diets (2.2, p 160) of corn/soybean diets, those of WATANABE. LA SPUIR concludes arginine at high levels increases nutrient utilization, thus obvious to add to standard swine diets.

One of ordinary skill in the art would be well versed in the nutrient requirements of swine. Therefore, in Watanabe it would have been obvious to one of ordinary skill in the art at the time the invention was made to include at least the required amounts of amino acids, with the addition of high levels of arginine as taught by Laspiur to increase nutrient utilization.

Claims 1-3, 5-10, 20, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over KUROKI JP 58-043725 and MAHAN-2000 in view of CHANG et al 7087261 or BOLLA et al 6737262

KUROKI feeds 10g arginine to 150g protein, or 7% of the supplement (claim, page 1 of translation). A standard protein source is soybean meal. MAHAN shows amino acid composition of soy protein (Table 2) as within the instant ratios, except for arginine and methionine/cysteine.

CHANG shows the amino acid levels of high protein corn (Table 2) are all above the instant Claim 1 requirements, except for arginine. Since corn, as energy source and soybean meal, as protein source are fed to pregnant, high producing cows, the supplement or concentrate feed of corn and soybean would be expected to be fed to the cows of KUROKI, along with the high lysine and arginine. The combination with about 10kg of corn would be within the instant ratios and ranges as instantly claimed.

BOLLA provides amino acids (col 5, lines 43-48) synthetically produced (col 1, lines 42-43, 62-66) as peptides, as feed supplements (col 3, lines 45-49). Examples, such as Tables 5, 6 show the instant ratios determinable by nutritionists, depending upon the production requirements of the species of concern. The addition of arginine to the cow supplements of BOLLA would have been motivated as a means to control gender.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a feed additive to control gender & provide high nutrition for growth & development of the fetus, to utilize

Known nutrient requirements modified with BOLLA'S amino acid levels.

The selection of each ingredient or administration method is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired.

There is no unobvious and/or unexpected results obtained since the prior art is well aware of the use of amino acids for enhancement and the use of ingredients for the functionality for which they are known to be used is not a basis for patentability.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed.

Response to Arguments

Applicant's arguments with respect to claim 1-3, 5-23 have been considered but are moot in view of the new ground(s) of rejection.

The instant claim 21, re-written as a premix, with the premix at 1.25-10% arginine, and arginine at > 2.25 of lysine would be non-obvious over the art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619.

The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A. WAX can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/
ART UNIT 1615

6//3/2010